

MEMORANDUM FROM THE SUPREME JUDICIAL COURT
STANDING ADVISORY COMMITTEE
ON THE MASSACHUSETTS RULES OF CIVIL PROCEDURE
REGARDING PROPOSED AMENDMENTS TO RULE 30 AND REMOTE DEPOSITIONS
DECEMBER 2022

This memorandum explains proposed amendments to Mass. R. Civ. P. 30 and, specifically, the rule's section relating to remote depositions.

The proposed amendments are largely premised on elements of the Supreme Judicial Court's pandemic-related Updated Order Regarding Remote Depositions, which was issued in the early days of the COVID-19 Pandemic. The proposed amendments, however, take into account the opinions of members of the Massachusetts bar in response to the Supreme Judicial Court's survey of the bar regarding various emergency COVID-19 orders. See Report of Massachusetts Attorney Survey on the Future of Virtual Technology in the Courts, *available at* <https://www.mass.gov/service-details/report-of-massachusetts-attorney-survey-on-the-future-of-virtual-technology-in-the-courts>.

By way of background, the Supreme Judicial Court issued a number of orders in response to the outbreak of the COVID-19 pandemic that addressed court operations and access during the pandemic. Among them were orders establishing protocols for taking remote depositions dated May 26, 2020, and revised October 23, 2020. These orders provided a mechanism for depositions to be taken at a time when in-person contact was inadvisable. The orders set aside traditional rules on the location of parties to the deposition and the swearing-in of witnesses, and allowed the use of developing technologies for group conferencing. The orders permitted litigants to take remote depositions as a matter of right and provided the basic rules for doing so. The Supreme Judicial Court's remote deposition orders also directed parties to a deposition to cooperate in facilitating remote depositions.

Under these pandemic orders, the courts, attorneys, parties, witnesses, and other litigation participants quickly adapted to new ways of working, with greater reliance on electronic communications and filings, and remote conferences, hearings, and depositions. Means and methods thought to be impractical prior to the pandemic became the norm within the court system and the litigation process.

The proposed amendments to Mass. R. Civ. P. 30 seek to strike a balance between returning to in-person activities and adopting the best of the aforementioned orders. The proposed rule does not adopt the default position of the SJC Updated Order that depositions are to be remote. Depositions are an important opportunity to, among other things, confront a

party, question a witness, and assess credibility. The Standing Advisory Committee's recommendation is that in-person depositions be the default, but parties and witnesses may either agree to a remote deposition or request that the court allow remote depositions upon motion. The amendments would set the basic ground rules for remote depositions, but do not include detailed requirements.

The proposed amendments also address who may attend the remote deposition and where participants may be situated with respect to the deponent. These provisions seek to balance the deponent's right to counsel with the concern that remote depositions may allow for coaching or interference with the examination. Like each of the other provisions of the proposed amendments, they are subject to the obligations of the parties and deponents to cooperate with each other in planning for and conducting remote depositions, and participants to a deposition may agree to other arrangements.